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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Situation of human rights in Cuba

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report on the situation of human rights in Cuba prepared by Ambassador Carl-Johan Groth (Sweden), Special Rapporteur of the Commission on Human Rights, in accordance with paragraph 9 of Commission resolution 1992/61 of 3 March 1992 and Economic and Social Council decision 1992/236 of 20 July 1992.

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ANNEX

Interim report on the situation of human rights in Cuba prepared by the Special Rapporteur of the Commission on Human Rights in accordance with Commission resolution 1992/61 and Economic and Social Council decision 1992/236

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I. INTRODUCTION

1. During its forty-eighth session, the Commission on Human Rights had before it the report on the situation of human rights in Cuba prepared by the Special Representative of the Secretary-General, Mr. Rafael Rivas Posada, pursuant to the mandate conferred by Commission resolution 1991/68 (E/CN.4/1992/27). a/ At the same session the Commission adopted resolution 1992/61 of 3 March 1992 entitled "Situation of human rights in Cuba". In paragraph 6 of that resolution, the Commission requested its Chairman to designate the Special Representative as its Special Rapporteur to review and report on the situation of human rights in Cuba. In paragraph 9 of the resolution, the Commission requested the Special Rapporteur to carry out his mandate, bearing in mind the Universal Declaration of Human Rights, and to report to the Commission at its forty-ninth session on the results of his endeavours under the same agenda item, and to submit an interim report to the General Assembly at its forty-seventh session.

2. In a letter dated 18 March 1992, the Special Representative, Mr. Rivas Posada, informed the Centre for Human Rights in Geneva of his decision not to accept the designation of special rapporteur given to him in the above-mentioned resolution.

3. In a letter dated 10 April 1992, the Chairman of the Commission on Human Rights at its forty-eighth session informed the Under-Secretary-General for Human Rights that, as Mr. Rivas Posada was no longer able to continue his mandate, the designation of a special rapporteur could not be accomplished until another person had been designated to replace Mr. Rivas Posada. The Chairman of the Commission therefore invited the Secretary-General to appoint a special representative who would subsequently be designated as the Commission's special rapporteur. In the same letter the Chairman, at the request of the Bureau of the Commission, requested legal advice on the interpretation of paragraph 6 of Commission resolution 1992/61.

4. In a note verbale dated 27 April 1992 from the Permanent Representative of Cuba to the United Nations addressed to the Secretary-General (see appendix I), and a note dated 4 May 1992 from the Permanent Mission to the United Nations Office at Geneva, addressed to the Under-Secretary-General for Human Rights, the Government of Cuba, in the light of the decision taken by Mr. Rivas Posada, transmitted its legal interpretation of resolution 1992/61 and of paragraph 6 in particular. The second note verbale stated, inter alia:

> "... the Chairman of the Commission at its forty-eighth session has no mandate to take it upon himself to designate another person other than Mr. Rafael Rivas Posada as Special Rapporteur ... since the wording of operative paragraph 6 is clear, precise and does not allow for the designation of another person ...

"Similarly, the Secretary-General of the United Nations lacks the power to designate another Special Rapporteur to replace Mr. Rafael Rivas Posada since ... this is not a case of the Special Rapporteur having relinquished his functions or died; quite the contrary, Mr. Rivas Posada, Special Representative, took up and completed the mandate conferred under [Commission] resolution 1991/68 and [Economic and Social Council] decision 1991/252; he did not accept the designation of Special Rapporteur given to him in operative paragraph 6 of resolution 1992/61.

"For all the foregoing reasons, it would be necessary to wait until the forty-ninth session of the Commission before considering this issue, since a specific decision from the Commission is needed in order to amend the wording of operative paragraph 6 of resolution 1992/61 ..."

5. On 30 April 1992 the Under-Secretary-General for Legal Affairs transmitted to the Under-Secretary-General for Human Rights the requested legal opinion (see appendix II), which read, in part, as follows:

"Nothing in the resolution indicates that its object and purpose is limited to Mr. Rivas Posada. It does not refer to him by name. No provision of any of the relevant Commission decisions of which we are aware refers by name to the individual who had been designated 'Special Representative'. It is the usual practice in the United Nations to consider 'Special Representatives' or 'Special Rapporteurs' as organs of the body establishing them, in this case the Commission on Human Rights. Absent a different intention expressed by the body establishing the post, the resignation or death of the person holding the post does not, in and of itself, end the mandate. Rather, a new appointment is normally made so that work can continue in fulfillment of the particular mandate, usually in the same manner as prescribed for the initial appointment."

6. The Economic and Social Council, in its decision 1992/236 of 20 July 1992, approved the requests contained in Commission resolution 1992/61.

7. On the basis of the foregoing, the Secretary-General decided to appoint Mr. Carl-Johan Groth, of Swedish nationality, as his Special Representative for Cuba replacing Mr. Rivas Posada and, on 31 August 1992, the Chairman of the Commission designated Mr. Groth as Special Rapporteur.

8. This interim report contains an account of the activities undertaken by the Special Rapporteur during the brief period which has elapsed since his appointment, and a preliminary analysis of the most pressing problems which Cuba faces at present in the field of human rights, in so far as the Special Rapporteur was able to assess them in the light of the information received. The Special Rapporteur transmitted an advance copy to the Government of Cuba on 5 November 1992.

II. ACTIVITIES OF THE SPECIAL RAPPORTEUR

9. Pursuant to the mandate conferred on him, the Special Rapporteur took into consideration information from a wide variety of sources and expressed his willingness to receive any person or group wishing to meet him. For that purpose, he travelled to New York from 28 to 30 September 1992, where he had the opportunity to meet individuals and representatives of the following organizations and groups active on the subject of human rights in Cuba and operating in the United States of America, mainly in New York and Miami: the Cuban Committee for Human Rights, the Committee to Support the Human Rights Movement in Cuba, the Centre for Human Rights, the Coordinating Body for Human Rights Organizations in Cuba (CODEHU), the World Federation of Former Cuban Political Prisoners, the Cuban Democratic Coalition, the Partido Demócrata Cristiano de Cuba (Cuban Christian Democratic Party), Freedom House, the Valladares Foundation and Americas Watch. The Special Rapporteur also travelled, on 13 and 14 October 1992, to Madrid, where he had occasion to meet Cuban citizens in exile and representatives of the Cuban Committee for Human Rights in Spain and the Association for Continental Peace (ASOPAZCO). In addition to those mentioned, other organizations, such as the Information Bureau of the Cuban Human Rights Movement, based in Miami, and Amnesty International (International Secretariat), provided the Special Rapporteur with valuable information.

10. Like his predecessor in the role of Special Representative of the Secretary-General, the Special Rapporteur endeavoured, without any positive results to date, to maintain, pursuant to resolution 1992/61, direct contact with the Cuban authorities, which he believes to be of crucial importance for him to carry out his mandate in the most effective manner. The Cuban Government's negative attitude to the provisions of resolution 1992/61 was re-emphasized in the statement made by its representative during the consideration by the Economic and Social Council of its agenda item 17 entitled "Human rights questions". Nevertheless, the Special Rapporteur continues to hope that this attitude will change. The Special Rapporteur had at his disposal the replies provided by the Government to communications which had been transmitted to it under other thematic procedures established by the Commission on Human Rights. The content of these replies has not been reflected in this report because the various rapporteurs and working groups have not yet made them public, but they will be reflected in the report to be submitted by the Special Rapporteur to the Commission on Human Rights at its forty-ninth session.

III. FREEDOM OF OPINION, EXPRESSION AND ASSOCIATION

11. Much of the information received by the Special Rapporteur from individuals and non-governmental groups has to do with the persecution to which persons linked to groups which have as their objective the condemnation of human rights violations, or which are critical of the current political system, are subjected. Although the actions of these groups are completely peaceful, and are even addressed, in a respectful manner, directly to the

authorities, their members are continually subject to harassment and persecution. This attitude on the part of the authorities would appear to have its legal basis in article 61 of the Constitution of 1976, which states that "None of the freedoms granted to citizens can be exercised in a manner contrary to the provisions of the Constitution and the laws, or to the existence and purposes of the socialist State, or to the decision of the Cuban people to build socialism and communism. Violations of this principle are punishable."

12. The Special Rapporteur has examined the complaints received in the light of the following provisions of the Universal Declaration of Human Rights:

"Article 19: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

"Article 20(1): Everyone has the right to freedom of peaceful assembly and association."

13. The Special Rapporteur also took into account Commission on Human Rights resolution 1992/22 entitled "Right to freedom of opinion and expression", adopted on 28 February 1992. In that resolution, the Commission referred to the link between violations of the right to freedom of opinion and expression and violations of other fundamental rights, such as the rights to liberty, security, life, privacy, peaceful assembly, protection against torture, and freedom of movement and religion; considered that the effective promotion of the human rights of persons who exercised the right to freedom of opinion and expression was of fundamental importance to the safeguarding of human dignity; appealed to all States to ensure respect and support for the rights of all persons who exercised the rights to freedom of opinion and expression and the rights to freedom of thought, conscience and religion, peaceful assembly and association, and the right to take part in the conduct of public affairs, or who sought to promote and defend those rights and freedoms and, where any persons had been detained solely for exercising those rights as laid down in the International Covenant on Civil and Political Rights, to release them immediately; also appealed to all States to ensure that persons seeking to exercise those rights and freedoms were not discriminated against, particularly in such areas as employment, housing and social services, or harassed; and invited the Special Rapporteurs to pay particular attention, within the framework of their mandates, to the situation of persons detained, ill-treated or discriminated against for having exercised the right to freedom of opinion and expression.

14. It should be pointed out that none of the human rights groups referred to in the present report has been able to acquire legal status since, so far as could be ascertained, the numerous applications to the Ministry of Justice for legal status under the Associations Act are consistently unanswered. b/

15. On the freedom of association, the Group which visited Cuba pursuant to Commission on Human Rights decision 1988/106 asked the Government the following questions c/ which the Special Rapporteur considers to be still valid and relevant: "May the rights of assembly, expression and association (Constitution, art. 53) be exercised solely through the social organizations and mass organizations recognized, protected and promoted by the State (Constitution, art. 7)? If an organization's application for registration is rejected, what options remain open for persons who wish to exercise their right to associate freely? Are any judicial remedies available? What are the criteria used to approve or reject an application for association? Might this provision limit the options of association, especially political options, and therefore of assembly and expression of persons who do not wish to exercise their rights of association, assembly and expression necessarily through the mass social organizations recognized, protected and promoted by State? If this is the case, would the channels for political participation be reduced to those organizations which are promoted by the State, thereby eliminating the possibility of the emergence of organizations opposed to the regime?". According to the same report, the Minister of Justice stated that, three years previously, the National Assembly had adopted the Associations Act, which stipulated that associations must be registered and which set forth the requirements for their functioning. d/

16. The human rights violations referred to in this section are exacerbated by the fact that, according to the information received, the system lacks laws and institutions designed to protect fundamental rights effectively by way of the guarantees of due process set forth in the Universal Declaration of Human Rights itself and in the basic principles relating to independence of the judiciary. e/

17. As regards the extent of the human rights violations referred to in the present section, the Special Rapporteur considers worth mentioning, as an example, a document of 30 September 1992, prepared by the organization "Americas Watch", in which it is stated that more than 250 people associated with human rights groups had been held in custody since 1989. At least 49 of them had apparently been serving sentences of up to 10 years for their activities in this connection. Others were being held in custody pending trial. At least half of the total had been in custody since September 1991. Many others had remained in custody for short terms in police or State security premises.

18. The limitations on the enjoyment of those rights are indicated principally as described below.

A. Trial and sentencing

19. Information has been received on sentences for offences against the security of the State such as "enemy propaganda", "dissemination of false information against international peace" and even "rebellion", or others such as "contempt" or "illegal association", which seemed by the reporters to be extremely harsh considering the acts for which people were accused, such as painting slogan on walls, printing and distributing pro-democratic literature, organizing peaceful demonstrations, and so on.

20. The crime of rebellion is rated in articles 98 and 99 of the Penal Code as follows:

> Article 98: "1. Any person who takes up arms in order to achieve by force any of the following purposes shall be sentenced to deprivation of liberty for ten to twenty years, or to death:
>
> "(a) To prevent in whole or in part, even if temporarily, the principal organs of the State and of the Government from carrying out their functions;
>
> "(b) To change the economic, political and social regime of the socialist State;
>
> "(c) To change, in whole or in part, the Constitution or the form of government established thereby;
>
> "2. The same penalty shall apply to any person who undertakes an act designed to foster armed uprising, should such uprising occur; should such armed uprising not occur, the sentence shall be deprivation of liberty for four to ten years."
>
> Article 99: "Any person who undertakes any other act designed, directly or indirectly, to achieve a purpose indicated in the preceding article, by violence or by other illicit means, shall be sentenced to deprivation of liberty for seven to fifteen years unless the act constitutes a greater crime."

As regards the said crime, the Group which visited Cuba pursuant to decision 1988/106 of the Commission on Human Rights asked the Government the following questions: "What is meant by 'or other unlawful means'? Does it mean, for example, that members of any unregistered association that might seek partial changes in the Constitution or the economic, social or political regime in Cuba may be charged with rebellion for having used unlawful means to achieve one of the objectives set forth in article 98, paragraph 1?" f/

21. The crime of enemy propaganda is rated in article 103 of the Penal Code as follows:

> "1. A sentence of deprivation of liberty for one to eight years shall be incurred by any person who:

"(a) Incites against the social order, international solidarity or the socialist State, by means of spoken or written propaganda or in any other form;

"(b) Makes, distributes or possesses propaganda of the type mentioned in the preceding subparagraph;

"2. Any person who disseminates false information or malicious predictions such as are likely to cause alarm or unrest in the population, or public disorder, shall be sentenced to deprivation of liberty for one to four years;

"3. If mass media are used to carry out the acts referred to in the preceding paragraphs, the sentence shall be deprivation of liberty for seven to fifteen years;

"4. Any person who permits the use of mass media as referred to in the preceding paragraph shall be sentenced to deprivation of liberty for one to four years."

22. Also as regards this provision, the aforesaid Group of ambassadors visiting Cuba asked the Government the following questions: "What is meant by incitement 'against the social order, international solidarity or the socialist State'? Could this article be used to prevent the free exercise of political criticism and the control of the authorities by the people? Could it constitute a threat to persons who disagree with government policy, both in Cuba and abroad? Lastly, the fact of using the media to express opinions at variance with those of the Government constitutes, in accordance with article 103, paragraph 3, of the Penal Code, an aggravating circumstance as regards the offence defined as enemy propaganda. Would this article constitute a threat to persons who oppose the political regime in Cuba? Would this imply recognition by the criminal law of the prohibition of the use of the media to express opinions at variance with those of the Government?" With reference to the offence of causing alarm, the following questions were asked: "How is it determined when an act, because of the nature, means or occasion of its execution, 'tends to cause public alarm with the aim of creating conditions affecting the security of the State'? What is meant by 'security of the State' and by 'causing alarm'?" f/

23. In the context of the crime of disseminating false information against international peace, article 115 states that: "whoever disseminates false information with the purpose of disrupting international peace, or endangering the prestige or credit of the Cuban State, or its good relations with another State, shall be subject to a loss of liberty of between one and four years".

24. In the context of that crime, the same Group asked the following question: "On the basis of what criteria do the authorities determine the falsity of an item of information and the extent to which information which is indeed false may 'disrupt international peace' or endanger the prestige or credit of the Cuban State or its good relations with another State'?" f/

25. On the offence of disrespect, article 144 of the Penal Code states that:

> "1. Whoever threatens, slanders, defames, insults, injures, in any way outrages or offends, orally or in writing, the dignity or honour of an authority, civil servant, or his agents or assistants, in the exercise of their duties or on the occasion or account thereof, shall be subject to deprivation of liberty of three months to one year, or a fine of 100 to 300 cuotas (units of currency) or both.
>
> "2. If the action referred to in the previous paragraph is carried out with respect to the President of the Council of State, the President of the National Assembly of People's Power, to the members of the Council of State or of the Council of Ministers or the Deputies to the National Assembly of People's Power, the penalty shall be deprivation of liberty of one to three years."

26. In the context of the above provision the Group asked: "What form of political criticism might be defined as not offensive and not insulting to the political authorities? Could this article constitute an obstacle to compliance with the constitutional provision granting the people the right to control its representatives and possibly revoke their mandate?" f/

27. As has already been stated above, Americas Watch produced a list of 49 persons connected with human rights organizations or of the so-called political dissidents who have been sentenced or are being tried on the basis of one of the offences mentioned above and are in prison (see appendix III). The same organization stated, however, that the list can be considered only as partial owing to the difficulty of following-up these cases. In fact, the Special Rapporteur received information from other sources on cases which are not on the Americas Watch list.

28. By way of example, the following are brief descriptions of some cases brought to trial in the course of this year:

(a) Miguel Angel Ballester Cintas, a member of the National Council for Civil Rights in Cuba from the township of Diez de Octubre, was arrested on 31 July 1992 and taken to the State Security Department in Havana on a charge of enemy propaganda. According to the indictment, Mr. Ballester was arrested after having sent the Council of State a letter, dated 10 April 1992, in which he renounced the medals awarded to him during the campaign in Angola.

(b) Marco Antonio Abad Flamand and Jorge Crespo Díaz were arrested in late 1991 and taken, respectively, to the Combinado del Este and Guanajay prisons. They were accused on a count of enemy propaganda for having produced a documentary titled Un día cualquiera, which was shown as a try-out in Costa Rica and, according to the report of the Prosecutor's Office, repeatedly attacked the integrity of Fidel Castro, the President of the Council of State and the Council of Ministers, using epithets considered to be insulting and offensive. At the trial in October 1992, the prosecutor called for a sentence of eight years' imprisonment.

(c) Santiago Medina Corzo, a physician, was tried on 8 May 1992 at the Santa Clara Provincial Court on charges of enemy propaganda. He was sentenced to four years in prison for having put up a poster - in his Motembo clinic - calling for freedom for political prisoners.

(d) Yndamiro Restano Díaz, a member of the Cuban Human Rights and National Reconciliation Commission and Chairman of the social democratic movement Armonía (MAR), and Maria Elena Aparicio, the coordinator of MAR, were sentenced on charges of rebellion to 10 and seven years in prison, respectively, by the Havana Provincial Court. Yndamiro Restano had been arrested on 20 December 1991 in the Havana district of Vedado and had been kept for several months without legal aid and without being charged. He was subsequently transferred to the Guanajay prison. The charges were apparently based on the attempts by Mr. Restano's movement to publish a bulletin which allegedly urged civil disobedience. According to the information available, although MAR is of a distinctly pacifist nature and has, since its establishment in 1990, constantly and publicly rejected the use of violence, the prosecutor accused the defendants of recruiting followers and promoting action designed to destroy the country's existing regime, by violent means if necessary.

(e) Sebastián Arcos Bergnes, Vice-Chairman of the Cuban Committee for Human Rights, was arrested in Havana in January 1992 by officers of the State Security Department. A few days before his arrest, during the trial for terrorism, sabotage and enemy propaganda of three men who had been detained on attempting to enter the country illegally, one of the accused was reported to have given the name and address of Sebastián Arcos Bergnes, and of two other leaders of the Committee, Gustavo Arcos Bergnes and Jesús Yanes Pelletier, as persons to contact in the event of problems. The three were arrested the next day. While Gustavo Arcos and Jesús Yanes were released 24 hours later, Sebastián Arcos Bergnes remained under arrest on charges of rebellion. At the trial in early October 1992 the prosecutor called for a six-year prison sentence.

(f) Angel Gonzalez Santos was arrested after displaying a poster reading "Down with Fidel" and shouting anti-Government slogans in the streets of Guanabacoa on 19 October 1991. The prosecutor called for a seven-year prison term on charges of enemy propaganda.

(g) Eduardo Vidal Franco, a doctor of internal medicine, Jorge Vázquez Méndez, a university physics student, and Rigoberto Carcelles Ibarra, a specialist at the Academy of Sciences, all members of Movimiento Cristiano Liberación, were charged for "enemy propaganda" and sentenced at Santiago de Cuba in June 1992 to prison terms of six years (Mr. Vidal) and five years (Mr. Vázquez and Mr. Carcelles). The charges apparently related to their involvement in collecting signatures in support of a proposal for constitutional change.

(h) Omar del Pozo Marrero, Chairman of Unión Cívica Nacional, was arrested on 19 April 1992. At his trial in August 1992 on charges of revealing State security secrets (article 95 of the Penal Code), he was sentenced to 15 years in prison. Mr. del Pozo was reported to have obtained information on State Security agents who had infiltrated human rights groups.

(i) José López Quinta, a university professor, was tried on charges of enemy propaganda at the Santa Clara Provincial Court on 5 June 1992 because he had sent a letter to the Rector of the Central University stating his disagreement with government policy and the need for changes in the country. The prosecutor called for an eight-year prison term.

(j) Carlos Pérez Truebas and various other individuals linked to human rights groups in Holguín were arrested on 22 January 1992 by State Security agents. All were released some days later except Carlos Pérez Truebas, who was charged for enemy propaganda in Case No. 2 of 1992 having been found in possession of the first draft of a book containing political poems.

29. A necessary comment with respect to this list of incidents and the way that the law is applied in each case is that it is completely impossible to express views which in any way run counter to the official line, even if addressed to the authorities respectfully.

B. Threats and intimidation

30. The Special Rapporteur also received information concerning a large number of cases in which individuals had apparently been subjected to threats or intimidation by agents linked to the State Security apparatus for reasons connected with their exercise of the right to freedom of expression, opinion or association. In some cases, the threats were reported to have been made in the course of questioning carried out after such individuals were summoned to police or State Security premises. Thus, for example, 26 intellectuals were summoned to Villa Marista, the State Security headquarters, in early August 1992, where they were questioned and threatened because they had signed and sent a message to the Heads of State and Government attending the Second Ibero-American Summit which requested help in persuading the Government to recognize the existence of dissident groups, to respect the right to freedom of expression and to facilitate dialogue. A police record was established for each one of them, including a handwriting sample and a signed statement. This is also true in the case of Luis Enrique González Pérez, who was threatened in the course of questioning at a police station in Havana, at the intersection of Calle 15 and Dolores, where he was summoned on 26 May 1992. During the questioning, he was accused of being a member of Movimiento Cristiano Liberación, collecting signatures for a bill introduced to the National Assembly of People's Power in 1990 by Oswaldo Payá, the movement's national coordinator, and distributing clandestine propaganda.

31. At other times the threats are made during visits to the home or workplace of the person in question, or the persons are subjected to verbal and/or physical abuse in the street. Thus, for example, it is reported that Mr. Juan Betancourt Morejón was assaulted on 21 February 1992 by two individuals who shot at him from an unloaded pistol and threatened to kill him if he persisted in his activities as General Secretary of Partido Pro Derechos Humanos de Cuba. Mr. Betancourt subsequently went into exile. Meanwhile, it is reported that Mr. Lázaro Linares Echevarría, a member of the Cuban Human Rights and National Reconciliation Commission, was summoned on 28 July 1992 to an office of the revolution defence committees on Calle Aguila, between Puerta Cerrada and Vives in Old Havana, by a State Security officer and other representatives of government organizations, who threatened him with physical harm. This also happened in the case of Mr. Ignacio Hidalgo Gómez, a member of the Cuban Committee for Human Rights in Holguín: he was threatened by a State Security Department officer who visited him at his workplace on 13 April 1992. Subsequently, on 17 April, he was assaulted by various individuals in the street.

32. Situations similar to those described also occurred in the cases of Rolando Prats, a member of the democratic social movement; Lázaro Corp Yeras and Manuel Manrique Zulueta, members of the Steering Committee of Cuba's General Union of Workers; Laercy del Prado Maceo, a member of the Cuban Committee for Human Rights delegation from Palma Soriano; Jesús Yanes Pelletier, Vice-Chairman of the Cuban Committee for Human Rights; Lázaro Alberto Fernández Hidalgo, a delegate of the National Council for Civil Rights in Cuba from San Antonio de los Baños; and Rodolfo González González, a member of the board of the Cuban Committee for Human Rights.

33. One particular form of intimidation is that of performing so-called "acts of repudiation" or protests organized - apparently officially - by the "Rapid Response Brigades", in which a large group of individuals, some of whom are said to have been identified as members of the security forces in civilian clothing, gathers around the home of a person alleged to be involved in what are seen as counter-revolutionary activities, shouts insults and threats for several hours and does damage to property. Some members of the Communist Party are also reported to have been expelled from the party for refusing to join the Rapid Response Brigades, and students are said to have been threatened by school authorities for the same reasons. In many cases, the police are present at such acts of repudiation but do not intervene; sometimes, at the end, they proceed to arrest the individuals who are "repudiated".

34. By way of example, this sort of treatment is reported to have been applied this year to Mr. Fernando Núñez, who underwent an "act of repudiation" by a group of some 200 people in front of his home on 28 January 1992 after having sent a letter to the newspaper Granma criticizing one of its articles. It was also applied to Mr. José Luis Pujol Irizar, a member of Movimiento Apertura de la Isla (PAIS) and of the Executive Secretariat of Concertación Democrática Cubana, who was arrested on 4 March 1992 after having been subjected to an act of repudiation at his home.

35. Mr. Francisco Chaviano González, chairman of the National Council for Civil Rights in Cuba, underwent an "act of repudiation" in front of his house in Jaimanitas, Municipio Playa, Havana, on 14 July 1992. The next day, the officer in charge of the Jaimanitas sector was reported to have begun summoning a large number of young people who had come to Mr. Chaviano's assistance and to have threatened to put them on record as "dangerous". In addition, a guard was said to have been prominently mounted in front of his home for the purpose of intimidation, together with a display of posters announcing that Mr. Chaviano was changing his address.

36. The family of Luis Alberto Pita Santos, the famous Chairman of the Association for the Defence of Political Rights who is now in prison, was also the subject of an "act of repudiation" on 31 January 1992 in front of its residence in Havana. Luis Pita y Nivaldo and Jorge Daniel Pita Santos, father and brother of Luis Alberto Pita Santos, were ill-treated and a number of human rights activists (Lázaro Loreto Perea, Angel Viera, Fernando Núñez and Rafael García) who happened to be at their house at that time were arrested by officials of the Ministry of the Interior and taken to the Sixth Police Station but were released on the same day.

37. Finally, Mrs. Angela de la Coba, Chairwoman of the Committee of Independent Mothers for Granting Amnesty to Political Prisoners, was also the subject of an act of repudiation on 7 April 1992 carried out by a group of journalists in addition to being frequently harassed together with other members of her Committee.

38. Incidents such as those described above suggest that, apart from the cases which are mentioned in the preceding section and are more striking because heavy prison sentences are handed down, the authorities also appear to be implementing a deliberate policy to intimidate human rights activists by methods that are unacceptable in any society where the rule of law holds sway.

C. Temporary detentions

39. The Special Rapporteur also received case reports on persons who, for exercising the rights of opinion, expression or association, had been held in custody for a few hours or a few days, interrogated and later released without any charges. Undoubtedly, in these cases the aim was to intimidate the detainees. For the duration of their detention, detainees are often kept incommunicado: they are not allowed to contact their families (who do not know their whereabouts) or to have access to legal counsel. In some cases, such persons are forced to sign, before their release, so-called "official warnings" provided for under article 75 of the Penal Code, as follows:

> "1. Persons who ... as a result of their links or relations with persons who constitute a potential threat to society, to other persons and to the social, economic and political order of the socialist State, may have a proclivity to crime, shall be officially warned by the relevant police authorities against engaging in socially dangerous or criminal activities.

"2. In any case, the warning shall formally state the reasons why it was given and what the person warned has to say, and it shall be signed by both that person and the official concerned."

40. The following cases are some of those of which the Special Rapporteur has taken cognizance:

(a) Lorenzo García, an activist of the Cuban Committee for Human Rights of Holguín, was arrested by State Security officials in the centre of Holguín in the course of his investigations into the arrest on 25 June 1992 of a number of youths. He was taken to the First Police Station and interrogated for four hours by a State Security official who tried to make him sign a warning.

(b) María Valdés Rosado, President of the Cuban Christian Democrat Movement, was arrested on 23 September 1992 and taken to the State Security building at Calles Aldavoz and Cien where she underwent an interrogation and was threatened before being released two days later. Since May 1992, she has been harassed by State Security forces and her telephone conversations have been continuously tapped.

(c) Pedro Luis Girón Bermúdez, a resident of Havana, was arrested on 3 March 1992 in Ciudad de Nueva Gerona, Isla de la Juventud, and taken to a local State Security station where he was interrogated and warned that he would be brought before the courts if any evidence was found that he was involved in any human rights activity in that municipality.

(d) Heriberto Acebedo and Héctor Pachá were arrested on 5 March 1992 in Ciudad de Nueva Gerona, Isla de la Juventud, after thorough searches of their homes where some pamphlets with the Universal Declaration of Human Rights, a typewriter and other personal belongings were seized. They were taken to the Nueva Gerona State Security office and interrogated. Héctor Pachá was detained for five days.

(e) Elizardo Sánchez Santa Cruz, Lázaro Loreto Perea and José Luis Pujol Irízar, members of the executive department of the Concertación Democrática Cubana were arrested in Havana on 4 March 1992 and taken to the Cojimar police station where they were kept for a whole day incommunicado. Sánchez Santa Cruz was rearrested on 9 October 1992 and detained in the police station premises at Calle Cien and Calle Aldavoz for four days.

D. Loss of jobs

41. According to reports, this type of intimidation is particularly cruel because it is impossible for the persons affected to find other jobs within their profession as the State is the sole employer. The following specific cases were reported:

(a) Dimas Cecilio Castellanos, a philosophy professor at the Havana Institute of Advanced Agricultural Sciences, was expelled from his department in early 1992 after he was accused by the university authorities of having in his possession a tape recording of the so-called "Synthesis of the Social Democratic Project". His dismissal also meant that he was banned from teaching in any of the country's centres of learning.

(b) Georgina González Corvo, Danilo Alonso Santana, Rafael González Dalmau, Miguel Morales Acosta, Ramsés Pérez Menéndez, Pedro Rubio Castillo and Rafael Sariol, lecturers at the José Antonio Echevarría Advanced Politechnical Institute in Havana were fired from their jobs in January 1992 after signing a letter demanding amnesty for political prisoners, respect for human rights and democratic reforms. José Ricardo Muñoz, a researcher, and María Martínez Martínez, a secretary, were also fired for signing the letter. Three other signatories, Néstor Castellanos Martínez and Carlos Delgado Abad, lecturers at the Enrique José Varona Advanced Educational Institute, and Luis Brito López, a graduate, who had shown their solidarity with their colleagues, were also fired a few days later.

(c) Juan Antonio Rodríguez Avila, a computer technician, was fired at the Empresa de Proyecto de Industrias Varias, which belongs to the State Committee for Economic Cooperation, during this year for dissenting from the official line of the Communist Party and supporting the proposals of the Christian Liberation Movement for a bill calling for a national dialogue.

(d) Néstor Baguer, a journalist of the National News Agency and Radio Cadena Habana; Manuel Díaz Martínez, of Radio Enciclopedia and an editor at the Cuban Radio and Television Institute; and Vladimiro Roca, who worked at the State Committee for Economic Cooperation were fired for sending to the Central Committee of the Communist Party a document entitled the "Social Democratic Project" which proposed democratic changes and reform of the Constitution. That Project had been sharply criticized in editorials of the local dailies, Granma and Juventud Rebelde, of 21 January and 16 February 1992, respectively. After his dismissal, Vladimiro Roca was the target of an "act of repudiation" in front of his house on 20 February 1992. Another signatory of this document, Enrique Julio Paterson, was summoned to the Villa Marista and interrogated on 6 February 1992.

42. The Special Rapporteur also received information that some spouses of members of human rights groups were fired from their jobs in retaliation for the activities of their husbands. The following cases in particular were singled out:

(a) Xiomara González Figueroa was fired from the newspaper Juventud Rebelde where she had been working as a journalist for about 23 years. The reason invoked was that she was "no longer fit to work in the organ of a political organization". The informers suspect, however, that the reason is because Mrs. González is the wife of Fernando Velásquez Medina, leader of the Agrupación Criterio Alternativo who has been in jail since November 1991.

(b) Teresa Peña Pupo, wife of Jorge Daniel Pita Santos, member of the Association for the Defence of Political Rights, was fired from her job at the "Los Galleguitos" kindergarten, Havana, on 18 February 1992, after she had been warned several times by the head-mistress about her matrimonial tie.

(c) Mayra González Castellanos, girlfriend of Sebastián Arcos Bergnes (see para. 28 (e)) was fired on 13 April 1992 from the National Sugar Cane Research Institute where she had been working for 8 years. According to Dismissal Order No. 16/92 of the Sugar Cane Institute, to which the Special Rapporteur had access, the dismissal was due to "unreliability" because Mrs. González "maintains close relations with a citizen who is hostile to socialism and heralds capitalist ideas about human rights in Cuba, which is clearly at variance with the policy of our institute". With respect to the last phrase, the Special Rapporteur would like to stress that, in his opinion, human rights are universal and cannot be linked to any specific ideology.

IV. CONDITIONS IN THE PRISONS

43. The Special Rapporteur received many case reports on conditions in the prisons which, in his opinion, are largely inconsistent with the Standard Minimum Rules for the Treatment of Prisoners g/ and the Code of Conduct for Law Enforcement Officials. h/ Many of these reports concern the shortage and poor quality of the food served to prisoners which is unfit for human consumption. Spontaneous protests arising from this situation are often repressed through imprisonment in special punishment areas and brutal beatings.

44. The reports also repeatedly mention the alarming lack of medical care for prisoners most of whom are ill from the food and hygienic conditions. Many of the reports referred to the situation of prisoners suffering from acquired immune deficiency syndrome (AIDS), with particular emphasis on a group of approximately 30 of them who are in the punishment area called "los candados" ("the locked up") in building No. 3 of the Combinado del Este Prison. According to the information received, the care given to these prisoners is not much better than the meager care provided by the prison staff; they have been denied the assistance of the specialists of the Clínica los Cocos, a sanitorium authorized and equipped to treat AIDS patients in Havana.

45. Various sources supplied the Special Rapporteur with a list of prisoners who are serving sentences for political offences and are constantly denied medical care. Their illnesses were identified (diabetes, tuberculosis, duodenal ulcers, etc.).

46. The sources mentioned several cases in which lack of medical care had led to death. For example, Rodolfo Gómez Ramos, 42 years old, died in March 1992 after being denied medical treatment at Micro 4 de Alamar prison in Havana, where he was serving a sentence for attempting to leave the country illegally. In view of his serious medical condition, caused by an ulcer, Mr. Gómez Ramos repeatedly asked to be moved to a hospital. His requests went unheeded; instead, arrangements were made to transfer him to a stricter prison

in the province of Matanzas, Agüica prison. Apparently it was while he was being moved that he died. According to information received, a commission of inquiry was appointed after the death. The Special Rapporteur does not know what the commission's findings were. It was also reported that on 1 February 1992, Francisco Díaz Mesa, 24 years old, died at Alambrada de Manacas prison. He was denied medical treatment after contracting pneumonia. According to information received, shortly before he died, he tried to get the attention of the guards; they gave him a severe beating, and he died shortly afterwards without receiving medical assistance.

47. Beatings are another recurrent theme in the reports. Far from being isolated incidents, they apparently are administered regularly by the prison authorities in order to punish or intimidate. Moreover, complaints of maltreatment addressed to the relevant authorities never seem to get anywhere. Among the cases mentioned was that of an inmate at Alambrada de Manacas prison, Bienvenido Martínez Bustamante, who was severely beaten on 8 June 1992, supposedly for criticizing the Revolution. It is reported that he had bruises all over his body, that his face was disfigured and that he had lost consciousness; nevertheless, he received no medical attention whatsoever. There was also the case of Ibelise Camejo Moleiro, who was brutally beaten on 4 May 1992 at Guanajay prison because he had written a letter to the authorities complaining about being in solitary confinement, having no water for personal hygiene and being denied correspondence.

48. According to the reports, the situation is at its worst with regard to scarcity of food and medicine, denial of medical care, unhealthy conditions and physical maltreatment at provincial prisons such as Kilo 7 prison (Camagüey), Cinco y Medio prison (Pinar del Río), Agüica prison (Matanzas), Boniato prison (Santiago de Cuba) and Alambrada de Manacas prison (Villa Clara). Furthermore, at such prisons inmates serving time for political offences are often attacked by those serving time for ordinary offences, without any preventive action on the part of the authorities.

49. There were also reports about conditions at labour camps ("correccionales laborales"), particularly those at Motembo and Quesada. The inmates are forced to perform arduous agricultural work, sometimes in a sick and undernourished state. According to the reports, workers being punished for indiscipline in the workplace, for economic transgressions and for other similar offences are sent to such centres.

V. THE RIGHT TO LEAVE THE COUNTRY

50. The Special Rapporteur considered the reports received in this area in the context of article 13, paragraph (2), of the Universal Declaration of Human Rights, which provides that "everyone has the right to leave any country, including his own, and to return to his country".

51. Illegal departure from the territory of Cuba is defined as an offence in article 216 of the Penal Code as follows:

"1. Any person who, without fulfilling the legal formalities, departs from or takes action with a view to departing from the national territory, shall be liable to a custodial penalty for a term of one to three years, or to a fine of 300 to 1,000 cuotas (units of currency).

"2. If for the purpose of the act referred to in the preceding paragraph, force or intimidation is used against persons, or objects are seized by force, the custodial penalty shall be for a term of three to eight years."

52. It was reported that in order for a citizen to leave the country legally, he or she had to have an exit visa, a formality that was in practice difficult to fulfil, even though, in 1991, the minimum age for travel abroad was reduced to 20 for men and women - no doubt a significant step in this area. There is no right of appeal against an administrative decision to deny an exit visa, which means that the administration enjoys full discretionary power.

53. On this subject, the report of the mission undertaken to Cuba in accordance with decision 1988/106 of the Commission on Human Rights includes the following observations:

> "The President of the Council of State told the group that, generally speaking, his Government grants authorization so that people who want to leave the country can do so, the idea being that nobody should stay in Cuba by force. However, he said that there are some exceptions to this rule, including professionals and scientists, former officers in the Armed Forces, persons in possession of military secrets, deserters or their relatives, and young persons liable to military service. He went on to mention that, apart from these persons, there are many others who have permission to leave the country, but not the relevant visa, and the responsibility for this situation lies not with Cuba, but with the United States, the country to which most emigrants wish to go. He urged the United States and Western European countries to display a readiness to solve this problem and issue visas to all persons who want to leave Cuba." i/

54. Immigration restrictions imposed by other countries, as mentioned in the above quotation, and other reasons such as the fear of the legal procedures (which, in addition to being complicated, have traditionally led to reprisals and discrimination) have made many people try to leave the country without applying for permission. In terms of the devices employed and the numbers involved, it can be said that most people who leave the country illegally do so by sea, using, among other things, tyres and small home-made boats kept afloat by anything buoyant, e.g. plastic containers, foam, tarpaulin, empty barrels, etc. Between the beginning of 1992 and the end of September, some 1,900 people are estimated to have reached, by sea, the United States or such other places as the Bahamas, Guatemala, Grand Cayman or the United States naval base at Guantánamo. At the same time, it is estimated that only one out of every four attempting to leave the country in this way succeeded.

55. Pursuant to article 216, charges are brought not only against those arrested after beginning the journey, but also against those under suspicion as persons who might try to leave. For instance, the Special Rapporteur received information concerning Oscar Fernández García and Jorge Guerrero Batista, who were arrested on 7 October 1991 at a place known as Playa Covento in the Paraguay district of the province of Guantánamo. Those citizens were arrested on the grounds that they were in a prohibited zone; nevertheless, according to information received, at the time of their arrest, they were at a bus stop and, accordingly, in an unrestricted area. They were taken first to a police station in the city of Guantánamo, then to the premises of the State security services, where they remained incommunicado for 23 days, and lastly to the prison in the city of Guantánamo. In May 1992, they were tried for attempting to leave the country illegally, and were sentenced to one year in prison.

56. Other cases referred to the Special Rapporteur concerned persons who were arbitrarily denied permission to leave the country, even though they had the appropriate entry visas from foreign countries. For example, the Special Rapporteur was informed about the case of Rolando Roque Malherbe, a researcher at the National Centre for Scientific Research, who was denied permission to leave the country in order to take up an appointment at a Spanish institution. He was also denied permission to travel to Venezuela, where he had been invited to give some lectures. According to Mr. Roque Malherbe, the reasons why his applications were turned down one after another had to do with the fact that he had, in the past, stated in private circles that he did not agree with Marxist ideology. He sees no merit in the arguments given by his superiors to justify the repeated rejections, namely that his presence at the Centre was indispensable, since in fact he has been marginalized in his research work and has even been threatened with dismissal.

57. A third group of reports relates to the situation of families that remain divided because, even though family members residing in Cuba have entry visas for the countries to which they would like to travel, the authorities have denied them permission to leave in order to join other family members. The following are in this group: Ernesto Luque, a young man who is not being allowed to leave the country to join his parents residing in the United States; the wife and daughter of Antonio Cardoso, a Canadian resident, even though they were granted Canadian resident visas in 1990; the family of Dr. Ramiro Coro Caraballo, who left the country in 1989 and now lives in the United States. In connection with some of those cases, it was reported that denial of authorization to leave the country had been accompanied by reprisals, such as dismissals.

VI. CONCLUSIONS

58. Bearing in mind the information given in the foregoing sections, and hoping that the situation of human rights in Cuba may improve, the Special Rapporteur wishes to propose to the Government of Cuba, via the General Assembly, the adoption of measures:

(a) To cease persecuting and punishing citizens for reasons relevant to the freedom of peaceful expression and association;

(b) To permit legalization of independent groups, especially those seeking to carry out human rights activities, allowing them to act within the law but independently;

(c) To respect the guarantees of due process, in accordance with the provisions set forth in international instruments;

(d) To ensure greater explicitness and guarantees in the prison system, so as to avoid incidents of excessive violence exercised against prisoners. In this connection, to allow independent national groups access to prisons and to renew the agreement with the International Committee of the Red Cross for the same purposes would be a major achievement;

(e) To review sentences imposed for political offences and for trying to leave the country by unlawful means;

(f) To expedite, and to make more explicit, the procedure of applying for a permit to leave the country, while at the same time avoiding countermeasures against the applicants. Family reunification cases should be given priority attention. On this subject, the Special Rapporteur is aware of the necessity to have visas for entry into other countries.

59. It would be desirable for Cuba's policy on travel abroad to be less strict and, for other countries, in their turn and as a counterpart, to make their restrictions imposed on travel and communication vis-à-vis Cuba less stringent. This, in addition to resolving difficulties from a strictly humanitarian aspect, would help to end the artificial and painful isolation in which the Cuban people live.

60. While not overlooking the urgent need for specific measures, as proposed above, the Special Rapporteur nevertheless wishes to point out that any analysis concerning the situation and implementation of human rights in Cuba must, as a point of departure, accept the fact that the Government is, and has for a long time been, surrounded by an international climate extremely hostile to many of its policies and, in some cases, even to its very existence. This hostile international climate does not seem to have been affected by the vast political, military and economic changes that have taken place in the world in the last few years. Similarly, the changes which have occurred in the previously socialist European countries, as also in the policies of many third world countries, seem to have so far had an impact on Cuba's internal policy. On the other hand, the abrupt breakdown in the flow of aid previously received from abroad, as well as the almost total exclusion of Cuba as a beneficiary of the multilateral financing and technical assistance agencies, have not given the Government much scope for manoeuvre in this field. A policy vis-à-vis Cuba based on economic sanctions and other measures designed to isolate the island constitute, in the opinion of the Special Rapporteur, at the present stage, the surest way of prolonging an untenable internal situation, as the

only remedy that would be left for not capitulating to external pressure would be to continue desperate efforts to stay anchored in the past. International sanctions, especially if accompanied by conditions implying the adoption of specific measures, be they political or economic, are totally counterproductive if it is the international community's intention to improve the human rights situation and, at the same time, to create conditions for a peaceful and gradual transition towards a genuinely pluralist and civil society. Any suggestion along the line that the future sovereignty of the Cuban people could be contingent on external powers or forces would, in the collective memory of the Cuban people, evoke traumatic experiences of their not-very-distant history and their fight for independence, and would be a very effective obstacle towards achieving changes which could be very welcome in other circumstances.

61. Cuba is going through one of the most difficult periods in its recent history so far as the economic situation is concerned. The reasons for this are obvious and they need no elaboration in this report. The level of living has deteriorated to a point where basic services such as public transport have reached levels close to a standstill. Given this situation, the public reaction can be none other than deception and despair. On the other hand, the Government seems to be resorting to repressive measures for silencing any expression of discontent or independent opinion however moderate it may be. The persecution of individuals is being carried on, sometimes even at trifling levels, and with a callousness which, in the eyes of an impartial observer, would seem patently out of proportion. The cases referred to in this report give a clear picture of this situation.

62. The Cuban nation which, in adverse conditions, has managed to cast off much of the dead weight of underdevelopment and now has a literate and skilled population which, by applying measures such as those proposed, could take a step forward towards a productive and creative society in which the guarantees of human rights are respected in an environment of mutual confidence and social peace.

63. Finally, it is worth noting that the Universal Declaration of Human Rights and its policy-setting developments in the context of the United Nations provide, first and foremost, reading material of a world-wide scope that covers human rights and sets an irrevocable minimum standard, regardless of the social or ideological reality current in a given country. Accordingly, any particularism or regionalism which may develop specific, or its own individual, conceptions of human rights must show respect for the provisions in that minimum standard, and justify itself only so far as it raises or develops the level of protection set forth therein. In this context, ratification by Cuba of the principal instruments of human rights formulated in the context of the United Nations would be a major step forward.

Notes

a/ E/CN.4/1992/27.

b/ Throughout this report the names of groups and their posts are used as transmitted to the Special Rapporteur by non-governmental sources.

c/ E/CN.4/1989/46, para. 58.

d/ Ibid., para. 59.

e/ Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and confirmed by the General Assembly in its resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

f/ E/CN.4/1989/46, annex XVI.

g/ Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders and approved by the Economic and Social Council in its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

h/ Adopted by the General Assembly in its resolution 34/169 of 17 December 1979.

i/ E/CN.4/1989/46, para. 86.

APPENDIX I

Note verbale dated 27 April 1992 from the Permanent Representative of Cuba to the United Nations addressed to the Secretary-General

The Permanent Representative of Cuba presents his compliments to the Secretary-General of the United Nations and has the honour to transmit to him the Cuban Government's legal interpretation of Commission on Human Rights resolution 1992/61.

Cuba, as its authorized representatives have stated, believes that this resolution is the illegitimate offspring of the efforts of the United States Government to interfere in Cuba's internal affairs, seeking new pretexts and complicities for continuing its aggressive policy against Cuba in the current changing conditions of the world, where old "cold war" justifications have no credibility any longer.

In that connection, Cuba has expressed its determination not to accept the illegal and discriminatory treatment that the United States Government is trying to impose on it and in which the latter is trying to involve the United Nations, so that as a result of this firm position it will not implement so much as a single comma of resolution 1992/61 imposed by the United States on the Commission on Human Rights.

This attitude is identical to that taken by Cuba with regard to Commission resolution 1991/68, and is an immutable position of principle, consistent with the Charter of the United Nations and international law.

At the same time, Cuba has declared and reiterates its willingness and desire to continue its cooperation with the United Nations in the field of human rights, as shown not only by the contribution it has always made to the work of the Commission, but also, in respect of our country in particular, by the attention that the Cuban Government devotes to replies under the procedure established under Economic and Social Council resolution 1503 (XLVIII) and to the thematic Rapporteurs, and to contacts with the Secretary-General of the United Nations.

Futhermore, and in addition to the foregoing, operative paragraph 6 of resolution 1992/61, which "Requests the Chairman of the Commission at its forty-eighth session to designate the Special Representative appointed by the Secretary-General pursuant to its resolution 1991/68 as its Special Rapporteur to review and report on the situation of human rights in Cuba", makes it very clear that this is a personal designation of Mr. Rafael Rivas Posada, who served as Special Representative of the Secretary-General until the forty-eighth session of the Commission, at which he submitted the report for which he had received a mandate under Commission resolution 1991/68, approved by the Economic and Social Council in decision 1991/252.

The personal designation of Mr. Rafael Rivas Posada as Special Rapporteur is confirmed in operative paragraph 9 of Commission resolution 1992/61, which "Requests the Special Rapporteur to carry out his mandate, including the questions contained in his letter of 6 December 1991 (E/CN.4/1992/27, annex III and appendix), to the Cuban authorities, bearing in mind ...".

In other words, this paragraph refers to the letter sent by Mr. Rivas Posada when he was still serving as Special Representative of the Secretary-General.

It is clear, as regards designation of the Special Rapporteur, that there is no other possible interpretation of the text of resolution 1992/61, and this was recognized by Mr. Rivas Posada himself when, in his letter of 18 March 1992, he informed the Chairman of the Commission of his decision not to accept the appointment as Special Rapporteur on Cuba which, in accordance with resolution 1992/61, would go to him.

Since, pursuant to Commission resolution 1991/68 and Economic and Social Council decision 1991/252, Mr. Rivas Posada's post as Special Representative of the Secretary-General expired at the forty-eighth session of the Commission on Human Rights, and at that time the Commission did not recommend any mandate to continue that post, either in the person of Mr. Rivas Posada or in any other person, it is patently clear that at present there is no legal basis for appointing a new Special Representative of the Secretary-General, and no legal basis for designating any person other than Mr. Rivas Posada as Special Rapporteur.

In the light of the foregoing, it is the legal opinion of Cuba that Commission resolution 1992/61 is in all points inapplicable because Mr. Rivas Posada declined the appointment offered to him therein.

These legal and procedural reasons, along with substantive and political reasons, lead Cuba to reject, with the utmost firmness and determination, the manoeuvres carried out against it by the United States Government which, with unparalleled hypocrisy, used the pretext of human rights and attempted to make the United Nations an accomplice in its misdeeds. Given this situation, my country's energy and determination will not be lacking at any time.

The Permanent Representative of Cuba takes this opportunity to convey to the Secretary-General the assurances of his highest consideration.

APPENDIX II

Opinion issued by the Office of Legal Affairs on the interpretation of paragraph 6 of Commission on Human Rights resolution 1992/61

...

8. In order to clarify the legal situation thus created, recourse must be had to the terms of resolution 1992/61 in their context and in the light of their object and purpose. While the resolution does not address directly the question of a possible substitution for Mr. Rivas Posada, not only the above-quoted passage, but other provisions of that resolution are relevant in ascertaining the Commission's intentions in adopting the resolution. By paragraph 7, the Commission requested the Special Rapporteur "... to maintain direct contact with the Government and citizens of Cuba, in accordance with resolution 1991/68 and decision 1989/113, concerning the issues and questions contained in and associated with the report of the mission to Cuba as well as the report of the Special Representative". By paragraph 8, the Government of Cuba was urged to cooperate with the Special Rapporteur. Finally, by paragraph 9, the Special Rapporteur was requested to carry out his mandate and to report to the Commission on the results of his endeavours pursuant to the resolution at its forty-ninth session and to submit an interim report to the General Assembly at its forty-seventh session.

9. The intention of the Commission, therefore, is that the mandate conferred originally on the Secretary-General's Special Representative would be continued by a new Special Rapporteur appointed by the Secretary-General as Special Representative and designated by the Chairman as Special Rapporteur. The Commission decided that the Chairman should, for that purpose, designate the Secretary-General's Special Representative as the Commission's own Special Rapporteur. The operative provisions of the resolution make it clear that the original mandate is to be continued and that reports on the efforts made to carry out that mandate are to be submitted both to the next session of the Commission on Human Rights and the General Assembly.

10. Nothing in the resolution indicates that its object and purpose is limited to Mr. Rivas Posada. It does not refer to him by name. No provision of any of the relevant Commission decisions of which we are aware refers by name to the individual who had been designated "Special Representative". It is the usual practice in the United Nations to consider "Special Representatives" or "Special Rapporteurs" as organs of the body establishing them, in this case the Commission on Human Rights. Absent a different intention expressed by the body establishing the post, the resignation or death of the person holding the post does not, in and of itself, end the mandate. Rather, a new appointment is normally made so that work can continue in fulfilment of the particular mandate, usually in the same manner as prescribed for the initial appointment.

11. To hold in this case that the mandate ended with the resignation of the Special Representative would result in thwarting the Commission's clearly stated intention that the mandate be continued and that reports be submitted on the endeavours made to carry it out. There is no language to support the contention that the mandate was only to be carried out by a particular person.

12. Moreover, the Commission's practice supports the Chairman's position that a replacement should be sought. For example, in 1985, the Commission's Special Rapporteur on the situation of human rights in Chile resigned. The Chairman appointed a successor "following consultations with the members of the Bureau of the Commission and in accordance with established practices" (E/CN.4/1985/41, para. 5).

13. Finally, nothing in resolution 1992/61 indicates that the Commission meant to imply that the designation of a Special Rapporteur would entail that, in future cases, the nomination of a Special Rapporteur would have to be done, not by the Secretary-General, but by reverting to the usual practice. On the contrary, the resolution refers explicitly to the fact that "the Special Representative appointed by the Secretary-General" is designated Special Rapporteur.

14. We agree, therefore, with the Chairman's intention to invite the Secretary-General to designate a new Special Representative and find it to be a logical and correct interpretation of Commission resolution 1992/61. As envisaged by the Chairman, in this case the Secretary-General should be invited to appoint a new Special Representative. Such an appointment should be made in accordance with the procedure set out for the appointment of the initial Special Representative in Commission resolution 1991/68, i.e. "after consultation with the Chairman and the Bureau of the Commission".

15. Once appointed by the Secretary-General, the Special Representative would then, as indicated by the Chairman, be designated the Commission's Special Rapporteur pursuant to its resolution 1992/61.

APPENDIX III

List of 49 persons associated with human rights organizations or of so-called political dissidents who, according to the organization "Americas Watch", were in prison at the end of September 1992

Marco Antonio Abad Flamand
Gabriel Aguado Chávez
Eliezer Aguilar López
Pedro Alvarez Martínez
María Elena Aparicio
Sebastián Arcos Bergnes
Daniel Azpillaga Lombard
Tomás Azpillaga Lombard
Reinaldo Betancourt Alvarez
Amador Blanco Hernández
Rigoberto Carcelles
Jesús Contreras Milán
Jorge Crespo Díaz
Aníbal Cruz Martínez
María Elena Cruz Varela
Bienvenida Cúcalo Santana
Joel Dueñas
Aurea Feria Cao
Augustín Figueredo Figueredo
Juan Enrique García Cruz
Pastor Herrera Macurán
Rubén Hoyos Ruíz
Wilfredo Llanes Márquez
Juan Ramón Llorens
Basilio Alexis López
Alexis Maestre Saborit
Rigoberto Martínez Castillo
Luis Enrique Martínez Martínez
Hubert Luis Matos Sánchez
Juan Mayo Méndez
Ramón Obregón Sarduy
Rolando Pagés
Omar Pérez Morales
Luis Alberto Pita Santos
Jorge Pomar Montalvo
Omar del Pozo
José Luis Pujol
Jorge Quintana
Yndamiro Restano
Julián Jorge Reyes
Pablo Reyes
Roberto Ríos Alducín
Félix Rodríguez Ramírez
Amado Rodríguez Rodríguez
Miguel Sordo Quintanilla
Jorge Vázquez
Fernando Velázquez Medina
Eduardo Vidal
Fidel Vi_a Linares